

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

HERIBERTO VALIENTE, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

PUBLIX SUPER MARKETS, INC.,

Defendant.

CASE NO. 1:22-cv-22930-RNS

**DEFENDANT’S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT
OF MOTION TO DISMISS FIRST AMENDED COMPLAINT [ECF NO. 11]**

Pursuant to Local Rule 7.8, Defendant Publix Super Markets, Inc. brings to the Court’s attention the following supplemental authority:

- *Matthews v. Polar Corp.*, No. 22-CV-649, 2023 WL 2599871 (N.D. Ill. Mar. 22, 2023) (“Exhibit A”).
- *Rudy v. D.F. Stauffer Biscuit Co.*, No. 21-CV-03938, 2023 WL 2711612 (N.D. Ill. Mar. 30, 2023) (“Exhibit B”).

In both cases, plaintiffs—represented by the same New York-based counsel representing Plaintiff here—brought class actions alleging deceptive practices where products with *de-minimis* amounts of lemon came in packaging with the word “lemon” and lemon images. The plaintiffs alleged similar claims for violations of state consumer-protection statutes, breach of warranties, negligent misrepresentation, fraud, and unjust enrichment. Both cases were dismissed because, the courts determined, a reasonable consumer would

understand lemon images, yellow package coloring, and “Lemon” in context as indications of flavor and not a guarantee of more than a *de-minimis* amount of lemons. See Exh. A at *14-17, 22; Exh. B. at *10-12, 20.

These decisions are relevant to all arguments raised in Publix’s Motion To Dismiss Plaintiff’s First Amended Class Action Complaint [ECF No. 11], as Plaintiff makes nearly-identical claims about this “honey-lemon” product and Florida law uses the same reasonable person standard.

Dated: April 24, 2023

Respectfully submitted,

/s/ Daniel B. Rogers

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